

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TECHNICA LLC.

Employer

and

Case 28-RD-218554

PEDRO CANO

Petitioner

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 351

Union

ORDER

The Petitioner's Request for Review of the Regional Director's Order Vacating Hearing and Dismissing Decertification Petition raises a substantial issue with respect to the Regional Director's Order. We find, in agreement with the Regional Director, that under extant precedent the instant petition is properly dismissed if, at the time the petition was filed, a reasonable period of time for bargaining had not elapsed following the parties' informal settlement agreement. *Freedom WLNE-TV, Inc.*, 295 NLRB 634, 634 (1989). However, the Regional Director erred in applying the standard set forth in *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 402 (2001), *enfd.* 310 F.3d 209 (D.C. Cir. 2002), which defines a reasonable time for bargaining before the union's majority can be challenged as no less than 6 months but no more than 1 year. As the Board made clear in that case, this standard applies only where employers "have *unlawfully* refused to recognize or bargain with incumbent unions." *Id.* at 399 fn. 7 (emphasis added). Here, the Employer's conduct was neither found nor admitted to be unlawful. Therefore, the *Lee Lumber* standard is inapposite to the facts here.

Instead, the Regional Director was required to analyze whether a reasonable time for bargaining had elapsed under *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), *enfd.* 192 F.2d 740 (4th Cir. 1951), *cert. denied* 342 U.S. 954 (1952), and its progeny, which do not have a minimum 6-month requirement and instead utilize a multi-factor test. See *AT Systems West, Inc.*, 341 NLRB 57, 61 (2004), and cases cited therein. In making this determination, the Board considers 1) whether the parties were negotiating for a first contract, 2) the complexity of the issues being negotiated, 3) the amount of time spent bargaining, 4) the progress made in bargaining, and 5) whether the parties reached impasse. *Id.*

Here, in view of the fact that the Regional Director failed to apply the proper test to determine whether a reasonable amount of time for post-settlement bargaining had elapsed when the instant petition was filed, and because his dismissal letter does not contain facts sufficient to make a

determination under the correct test, we reinstate the petition and remand this case to the Regional Director for further consideration of this issue.

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., August 9, 2018.